IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Civil Writ Petition No. 3749 of 2001 (S/S)
Old No. 20879 of 1996

Anurudh Kumar Shukla …… Petitioner

Versus

Uttaranchal Secondary Education
Service Commission & others …….. Respondents

Mr. I.D. Paliwal, learned counsel for the petitioner.
Ms. Seema Sirohi, learned Standing Counsel for the State.

Hon. Rajesh Tandon, J.

By the present writ petition the petitioner has prayed for issuance of a writ of mandamus directing the respondents not to interfere in the functioning of the petitioner of the Assistant teacher, L.T. Grade in the Arya Inter College, Deghat, Almora and further to issue a writ of mandamus directing the respondents to regularise the service of the petitioner as Assistant Teacher, L.T. Grade in the Arya Inter College, Deghat, Almora.

Breif facts of the case are that the petitioner is a science graduate and also possesses B.Ed. degree. A post of Assistant Teacher fell vacant in Arya Inter College, Deghat, Almora (College for short) for a short period during the academic session 1990-91. The College is a recognised Intermediated College and is governed by the provisions of U.P. Intermediate Education Act, 1921 and the Regulations and orders framed there under. According to the petitioner, the short term vacancy, which was for less than six months duration was to be filled in by the Committee of Management of the College and being B.Sc. B.Ed. he was eligible to be appointed as Assistant Teacher in the

College. The vacant post of Assistant Teacher in the College was advertised in local newspaper ‘Shakti’. The petitioner, who fulfilled the eligibility criteria for the post, applied for the post. The selection was conducted by the Selection Committee appointed by respondent No. 4. The petitioner was appointed as Assistant Teacher in the College in the pay scale of Rs. 1200-2040 by the respondent No. 4 vide appointment letter No. 236/90-91, in terms of the approval accorded by respondent No. 4 vide his letter No. Madhyamik/38663-66/Niyunkti/Panch-26 dated 15.02.91 till the last date of academic session 1990-91 in a purely temporary capacity. The petitioner joined the post of Assistant Teacher in C.T. Grade in the College in terms of the appointment order on 15.02.1991 and continued till 18.05.1991 i.e. the last working day of the academic session 1990-91. Again a short-term vacancy of Assistant Teacher in C.T. Grade fell vacant in the College for Mathematics and Science subjects. The petitioner applied and was selected and subsequently appointed as Assistant Teacher in C.T. grade of Rs.1200-2040 in the College fro teaching science and mathematics by the respondent No. 4 vide order No. 81-82/91/92 dated 01.07.1991, subject to the approval by the respondent No. 3.

Subsequently, a post of L.T. grade teacher fell vacant consequent upon the promotion of Shri Dwarika Prasad to the post of Lecturer. The petitioner applied to the said post and was selected and then appointed to the post of Assistant Teacher in L.T. grade of Rs. 1400-2300 in a short-term vacancy, subject to certain conditions specified therein. The appointment of the petitioner was purely temporary and liable to be terminated at one month’s notice. The petitioner was asked to resign his earlier post of Assistant Teacher in C.T. grade and join the new

post of L.T. grade. The petitioner accordingly joined in L.T., grade on 05.09.1991 and is still working.

The grievances of the petitioner is that he was working as a C.T. grade teacher since 15.02.1991 and thereafter appointed as a L.T. grade teacher in the College. After 1989 post of C.T. grade has been abolished and all the persons appointed after 1989 are to be appointed as L.T. grade, instead of C.T. grade. Therefore, appointment of the petitioner as C.T. grade teacher was wrong and petitioner has to be appointed/ treated as L.T. grade teacher since his date of appointment. According to the petitioner asking his to resign from the post of C.T. grade is irrelevant as by the perusal of the fact stated above it was clear that he was working as an Assistant Teacher since 15.02.1991.

The petitioner further submitted that he is entitled to be regularised in pursuance of the U.P. Act No. I of 1993 added as section 33(B) of the U.P. Secondary Education Services Commission Selection Board Act, 1992.

The relevant portion of the said Section is applicable in his case, and is quoted herein below:

33B. *Regularisation of certain of the appointments any teacher other than the Principal or Head Master who as (i) was appointed by promotion or by direct recruitment in the lecturer grade trained graduate grade on or before May 14 1991 or in the certificate of Teaching grade on or before may 13 1989 against a short term vacancy in accordance with paragraph 2 of the U.P. Secondary Education Service Commission (Removal of Difficulties) (Second) order, 1981 and such vacancy was subsequently converted into a substantive vacancy.*

According to the petitioner it is further relevant to mention here that the petitioner who was working as a L.T. grade Teacher

and Teacher prior to 14.05.1991 has been regularised. Therefore, petitioner is also entitled for regularisation in pursuance of the Section 33(B) of the U.P. Secondary Education Services Commission Selection Board Act, 1992.

The petitioner has also relied upon the judgment of the Apex Court in case of State of Haryana Vs Payara Singh reported in 1992 A.I.R. wherein it was held that ad hoc-temporary / causal labourers working fairly for a long time, were to be considered for regularisation.

Learned counsel for the petitioner has also referred to Uttaranchal Government Notification dated August 07, 2002 with regard to regularization of ad-hoc appointments.

Petitioner is permitted to make a representation. The respondents shall consider the same and shall appropriate orders in accordance with law.

Subject to the aforesaid observation, this writ petition is disposed of. No order as to costs.

(Rajesh Tandon, J.)

Dt. 27.04.2004
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